

REMARKS

Favorable reconsideration is respectfully requested in view of the foregoing amendments and the following remarks.

I. CLAIM STATUS AND AMENDMENTS

Claims 16, 17 and 22-25 were pending in this application when last examined.

Claims 16, 17 and 22-25 were examined on the merits and stand rejected.

Claim 16 is herein amended to clarify the claimed invention. Support can be found in claim 11 as filed.

Claims 23-25 are herein cancelled without prejudice or disclaimer thereto.

No new matter has been added.

II. NEW MATTER OBJECTION IN SPECIFICATION

In items 6-7 on pages 3-4 of the Office Action, the Examiner objected to the amendment to the specification filed February 27, 2009 under 35 U.S.C. 132(a) because the Examiner believes it introduces new matter into the disclosure.

It is noted that, as pointed out by the Examiner, the unamended specification contained an inaccuracy. The amendments to the specification correct this inaccuracy. However, such amendment has been removed from the claims in order to obviate new matter concerns. On the other hand, it is respectfully requested such specification amendment be entered to clarify the disclosure.

III. WRITTEN DESCRIPTION REJECTION

In items 8-9 on pages 4-7, claims 16, 17 and 22-25 were rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. In particular, the Examiner asserts that the amendment of the specification and claims to replace all occurrences of *Cypridinia noctiluca* with *Vargula hilgendorfi* constitutes the introduction of new matter because

the Examiner believes this organism was never once previously recited in the specification or the claims.

Applicants note that the claim 16 is herein amended to delete *Vargula hilgendorfi*, and that claims 17 and 22 depend on claim 16 and, thus, are encompassed by this amendment.

Claims 23-25 are herein cancelled.

In regard to the specification, entrance of the amendment is requested to clarify the disclosure.

Thus, Applicants respectfully submit that this rejection has been overcome.

IV. NONSTATUTORY OBVIOUSNESS-TYPE DOUBLE PATENTING REJECTION

In items 10-11 on pages 7-8, claims 16, 22 and 23 were provisionally rejected on the grounds of nonstatutory obviousness-type double patenting as being unpatentable over claims 9-12 and 18 of copending Application No. 10/526,569.

Claim 16 is herein amended to incorporate the subject matter of claim 25, which was not rejected on the grounds of nonstatutory obviousness-type double patenting.

Claim 22 depends on claim 16 and, thus, is encompassed by this amendment.

Claim 23 is herein cancelled.

Therefore, Applicants respectfully submit this rejection is untenable.

CONCLUSION

In view of the foregoing amendments and remarks, it is respectfully submitted that the present application is in condition for allowance and early notice to that effect is hereby requested.

If the Examiner has any comments or proposals for expediting prosecution, please contact the undersigned attorney at the telephone number below.

Respectfully submitted,

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